

FILE NO. _____

STATE OF MINNESOTA

IN SUPREME COURT

FILED

March 18, 2021

**OFFICE OF
APPELLATE COURTS**

In Re Petition for Disciplinary Action
against KIP WILLIAM KOOTZ,
a Minnesota Attorney,
Registration No. 026362X.

**PETITION FOR
DISCIPLINARY ACTION**

TO THE SUPREME COURT OF THE STATE OF MINNESOTA:

The Director of the Office of Lawyers Professional Responsibility (Director) files this petition upon the parties' agreement pursuant to Rules 10(a) and 12(a), Rules on Lawyers Professional Responsibility (RLPR). The Director alleges:

The above-named attorney (respondent) was admitted to practice law in Minnesota on April 23, 1996. Respondent currently practices law in St. Paul, Minnesota.

Respondent has committed the following unprofessional conduct warranting public discipline:

DISCIPLINARY HISTORY

In considering whether public discipline is warranted it is appropriate, pursuant to Rule 19(b)(4), RLPR, to consider respondent's prior discipline. Respondent's history of prior discipline, including admonitions, is as follows:

A. On July 1, 2009, respondent was placed on private probation for a period of two years for failing to cooperate with the Director's investigation of a complaint and failure to comply with the terms of his criminal probation for his 2004 DWI offense, in violation of Rules 8.1(b) and 8.4(d), Minnesota Rules of Professional Conduct (MRPC), and Rule 25, RLPR.

FIRST COUNT

A. Florida Disciplinary Matter and Minnesota Criminal Conduct

1. On May 11, 2020, the Director received an anonymous complaint informing the Director that respondent was disbarred from the practice of law in the state of Florida stemming from his convictions for driving while intoxicated (DWI).

2. On May 15, 2020, the Director began investigating the status of respondent's Florida law license through correspondence with Florida's bar counsel, and researched respondent's DWI conviction history. Respondent has the following convictions for DWI offenses:

- On May 5, 2004, respondent was convicted of gross misdemeanor Second Degree DWI .21 and over in Chisago County, Minnesota.
- On June 6, 2007, respondent was convicted of gross misdemeanor Second Degree Refuse to Submit to Test in Ramsey County, Minnesota.
- On October 29, 2009, respondent was convicted of gross misdemeanor Second Degree DWI – Operate Motor Vehicle - Alcohol Concentration .08 Within 2 Hours in Ramsey County, Minnesota.
- On June 18, 2015, respondent was convicted of gross misdemeanor Second Degree DWI .08 or More Alcohol Concentration in Ramsey County, Minnesota.
- On January 3, 2019, respondent was convicted of misdemeanor Driving Under the Influence over .15 in Palm Beach County, Florida. Respondent was also charged with felony DUI in this matter, due to his three prior DWI convictions in Minnesota. A jury ultimately determined that the State of Florida had not proven respondent's Minnesota DWI conviction history beyond a reasonable doubt and found respondent not guilty of felony DUI.

3. The prosecutor in respondent's Palm Beach County DUI matter notified the Florida Bar of respondent's arrest and pending charges in 2017. In May 2017, Florida Bar counsel contacted respondent, who admitted he had felony DUI charges pending and that he had previous DWI convictions in Minnesota.

4. Effective August 1, 2006, attorneys in Florida are required by Rule 3-7.2(e), Florida Rules of Discipline, to self-report to the Bar any criminal conviction imposed on their record. Respondent was required to report his 2007, 2009, and 2015 Minnesota DWI convictions to the Florida Bar and failed to do so. Respondent was also required to notify the Florida Bar of his pending felony DUI charge in Palm Beach County, by providing the Florida Bar with a copy of the charging documents within ten days of their issuance, pursuant to Rule 3-7.2(c), Florida Rules of Discipline.

5. The Florida Bar initiated disciplinary proceedings against respondent on May 10, 2019, following conclusion of the Palm Beach County DUI matter. In its complaint, the Florida Bar alleged respondent violated Rules 3-4.3, 3-4.4, and 3-7.2(e), Florida Rules of Discipline, and Rule 4-8.4(b), Florida Rules of Professional Conduct, but declined to charge out a violation of Rule 3-7.2(c), Florida Rules of Discipline.

6. Rule 3-4.3, Florida Rules of Discipline, provides in relevant part:

The commission by a lawyer of any act that is unlawful or contrary to honesty and justice may constitute a cause for discipline whether the act is committed in the course of the lawyer's relations as a lawyer or otherwise, whether committed within Florida or outside the state of Florida, and whether the act is a felony or a misdemeanor.

7. Rule 3-4.4, Florida Rules of Discipline, provides, in relevant part:

The Florida Bar may initiate disciplinary action regardless of whether the respondent has been tried, acquitted, or convicted in a court for an alleged criminal misdemeanor or felony offense. The board may, in its discretion, withhold prosecution of disciplinary proceedings pending the outcome of criminal proceedings against the respondent. If a respondent is acquitted

in a criminal proceeding that acquittal is not a bar to disciplinary proceedings.

8. Rule 4-8.4(b), Florida Rules of Professional Conduct, provides: "A lawyer shall not commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects."

9. Rule 3-7.2(e), Florida Rules of Discipline, requires that attorneys self-report criminal convictions to the Florida Bar, and provides: "A member of The Florida Bar must provide a copy of the document(s) entering a determination or judgment for any criminal offense against that member entered on or after August 1, 2006 to the executive director within 10 days of its entry."

10. Respondent was represented by counsel and participated in all phases of the Florida disciplinary matter, which ultimately concluded with a sanctions hearing on September 19, 2019. The referee presiding over the matter recommended respondent be disbarred for violating the above-listed Florida Rules of Discipline and Professional Conduct. Respondent did not contest the referee's findings or recommended discipline.

11. On April 2, 2020, Florida disbarred respondent from the practice of law (effective 30 days from the date of the order). Respondent failed to notify the Director of his disbarment in Florida and the Director found out through the anonymous complaint.

12. Pursuant to Rule 12(d), RLPR:

If [a] lawyer has been publicly disciplined in another jurisdiction, this Court may issue an order directing that the lawyer and the Director inform the Court within thirty (30) days whether either or both believe the imposition of the identical discipline by this Court would be unwarranted and the reasons for that claim. Without further proceedings this Court may thereafter impose the identical discipline unless it appears that discipline procedures in the other jurisdiction were unfair, or the imposition of the same discipline would be unjust or substantially different from discipline warranted in Minnesota.

13. The Director determined that the disbarment sanction imposed in Florida for respondent's misconduct is substantially different from the discipline generally imposed in Minnesota for similar misconduct, and declined to pursue reciprocal discipline in this matter. Respondent's misconduct in Florida and his violation of Florida rules governing attorney conduct, while likely not warranting disbarment in Minnesota, still supports public discipline.

14. Rule 8.5(a)(1), MRPC, provides that, "A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the conduct occurs." Rule 8.5(b)(2), MRPC, further provides that the "rules of the jurisdiction in which the lawyer's conduct occurred . . . shall be applied to the conduct."

15. Pursuant to Rule 19(b)(3), RLPR, the Florida Supreme Court's conclusion that respondent committed conduct warranting discipline is, in proceedings under these rules, conclusive evidence that respondent committed the conduct.

16. Pursuant to Rule 19(a), RLPR, respondent's DUI and DWI convictions from Florida and Minnesota are conclusive evidence that respondent committed the conduct for which he was convicted.

17. Respondent's conviction for misdemeanor DUI on January 3, 2019, in Palm Beach County, Florida, violated Rules 3-4.3 and 3-4.4, Florida Rules of Discipline, and Rule 4-8.4(b), Florida Rules of Professional Conduct.

18. Respondent's failure to report his 2007, 2009, and 2015 Minnesota DWI convictions, and his 2019 Florida DUI conviction to the Florida Bar violated Rule 3-7.2(e), Florida Rules of Discipline.

19. Respondent's failure to report his Florida disbarment to the Director violated Rule 12(d), RLPR.

20. Respondent's repeated DWI and DWI-related convictions in 2004, 2007, 2009, 2015, and 2019 reflect adversely on respondent's fitness to practice law and

indicate an indifference to his legal obligation to abide by the laws of Minnesota and Florida, in violation of Rule 8.4(b), MRPC.

SECOND COUNT

B. Misleading Firm Name

21. During a separate investigation, the Director observed that respondent used the firm name “Kootz & Associates, P.L.L.C.” on his letterhead and on his firm’s website despite being a solo practitioner.

22. On November 15, 2019, the Director wrote to respondent and advised him that his firm’s name was false and misleading, and provided respondent with a copy of Lawyers Professional Responsibility Board Opinion No. 20 which explained the issue in further detail.

23. On November 19, 2019, respondent wrote to the Director and advised that his firm’s name was adopted in 2003 when “there were at least two practicing attorneys involved with the firm.” Respondent acknowledged that “all promotional materials, letterheads, business cards, and website have used that name” and indicated he would “refrain from ordering any additional materials including the word ‘Associates’ in the firm name going forward.”

24. On May 26 and June 10, 2020, respondent wrote to the Director regarding the Florida disciplinary matter. Respondent’s letterhead continued to identify his firm as “Kootz & Associates, P.L.L.C.,” despite the Director’s previous warning that such identification was misleading in violation of Rules 7.1 and 7.5(a), MRPC.

25. On July 14 and 22, 2020, the Director viewed respondent’s firm’s website at: <http://kipkootz.com>. Respondent’s website continued to identify the firm’s name as “Kootz & Associates, P.L.L.C.”

26. On July 22, 2020, the Director interviewed respondent via Zoom, and again informed him that his firm’s name was false and misleading and needed to be changed.

27. On July 28, 2020, respondent informed the Director that he had changed his firm name and updated his promotional materials to state "Kootz Law, P.L.L.C."

28. Respondent's conduct in continuing to use the firm name "Kootz & Associates," after being advised by the Director in November 2019 that it was false and misleading, violated Rules 7.1 and 7.5(a), MRPC.

WHEREFORE, the Director respectfully prays for an order of this Court imposing appropriate discipline, awarding costs and disbursements pursuant to the Rules on Lawyers Professional Responsibility, and for such other, further or different relief as may be just and proper.

Susan M. Humiston

Humiston, Susan
Feb 11 2021 11:52 AM

SUSAN M. HUMISTON
DIRECTOR OF THE OFFICE OF LAWYERS
PROFESSIONAL RESPONSIBILITY
Attorney No. 0254289
445 Minnesota Street, Suite 2400
St. Paul, MN 55101-2139
(651) 296-3952
Susan.Humiston@courts.state.mn.us

and

Keshini M. Ratnayake Ratnayake, Keshini
Feb 11 2021 11:40 AM

KESHINI M. RATNAYAKE
SENIOR ASSISTANT DIRECTOR
Attorney No. 0386518
Keshini.Ratnayake@courts.state.mn.us